

1 (“EPA”) Region IX. Pursuant to EPA Delegation Order Number 7-6-A, dated May 4, 1994, the
2 Administrator of EPA has delegated the authority to file this action to the Regional Administrator of EPA
3 Region IX, and pursuant to EPA Regional Order Number R1265.05A, dated August 14, 2003, the
4 Regional Administrator re-delegated that authority to the Complainant, the Director of the Air Division..

5 3. Respondent owns and operates a reinforced plastic composite manufacturing facility (“Facility”)
6 located at 17031 Muskrat Avenue, Adelanto, California. Respondent is located in Adelanto, California,
7 which is in San Bernardino County and within the jurisdiction of the Mojave Desert Air Quality
8 Management District (“MDAQMD” or “District”).
9

10 B. STATUTORY AND REGULATORY BACKGROUND

11 MACT Requirements for Reinforced Plastic Composites Production

12 4. Section 112 of the Act requires EPA to list categories of sources of HAPs and to establish
13 NESHAP for the listed categories. 42 U.S.C. § 7412(c)(1). The Act requires the NESHAP to reflect the
14 maximum degree of reduction in emissions of HAP that is achievable. 42 U.S.C. § 7412(d). This level of
15 control is known as maximum available control technology (“MACT”).
16

17 5. Section 112(a) of the Act defines a “major source” as any stationary source that emits or has the
18 potential to emit . . . 10 tons per year (“tpy”) or more any hazardous air pollutant or 25 tpy or more of any
19 combination of hazardous air pollutants. 42 U.S.C. § 7412(a).

20 6. On July 16, 1992, EPA published a list of source categories that would be regulated under section
21 112(c). That list included the reinforced plastic composites production source category. 57 Fed. Reg.
22 31576.

23 7. On April 21, 2003, EPA published the final MACT standard for HAPs for Reinforced Plastic
24 Composites Production, 40 C.F.R. Part 63, Subpart WWWW, §§ 63.5780-63.5935. 68 Fed. Reg. 19375.

25 8. The effective date of the standard was April 21, 2003. 40 C.F.R. § 63.5780 and Table 2 to
26 Subpart WWWW specify that the owner or operator of an existing affected source must comply with the
27 requirements in Subpart WWWW by April 21, 2006.
28

1 9. In relevant part, 40 C.F.R. § 63.5785 states that the requirements of Subpart WWWW apply to
2 the owner and operator of each reinforced plastic composites production facility that is located at a major
3 source of HAP emissions.

4 10. In relevant part, 40 C.F.R. § 63.5790 states that Subpart WWWW applies to new or existing
5 affected sources at reinforced plastic production facilities. Section 63.5790 defines an “affected source”
6 as including: equipment used for molding, casting, lamination, pultrusion, sheet molding compound
7 manufacturing, bulk molding compound manufacturing, and mixing. Section 63.5790 also provides that
8 the term “affected source” also includes certain cleaning, storage and repair equipment at reinforced
9 plastic production facilities.

10 11. Pursuant to 40 C.F.R. § 63.5910(b), the owner or operator of sources subject to Subpart WWWW
11 must submit compliance reports on a semi-annual basis from the effective date of Subpart WWWW. Per
12 40 C.F.R. § 63.5910(b)(4), semi-annual compliance reports must be postmarked or delivered no later than
13 July 31 or January 31. Semi-annual compliance reports must contain the information specified in 40
14 C.F.R. § 63.5910(c), including any deviations from organic HAP emissions limitations or work practice
15 standards.
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17 Title V Operating Permit Requirements
18

19 12. Title V of the Act requires major stationary sources of air pollution to obtain an operating permit
20 that includes emissions limitations and such other conditions as necessary to assure compliance with
21 applicable requirements of the Act. 42 U.S.C. §§ 7661a-7661f.

22 13. Section 502(a) of the Act provides that, after the effective date of a Title V permit program,
23 operation of a major stationary source without a Title V operating permit is a violation of the Act. 42
24 U.S.C. § 7661a(a).

25 14. EPA’s implementing regulations for Title V define a major stationary source as including sources
26 that emits or has the potential to emit more than 10 tpy of any HAP listed under section 112(b) of the Act.
27 40 C.F.R. § 70.2.
28

1 15. Styrene is a listed HAP under section 112(b) of the Act. 42 U.S.C. § 7412(b).

2 16. EPA's regulations, at 40 C.F.R. § 70.5(a), provide that the owner or operator of a Title V source
3 must submit a timely and complete permit application. Section 70.5(a)(1) further provides that a timely
4 and complete application is one submitted within 12 months after the source becomes subject to the
5 permit program or on or before such earlier date as the permitting authority may establish.

6 17. The District adopted regulations to implement its Title V program on December 21, 1994. EPA
7 granted interim approval effective on March 6, 1996 and granted full approval to the District's Title V
8 program effective November 30, 2001. 40 C.F.R. Part 70, Appendix A; 66 Fed. Reg. 63503 (December
9 7, 2001).

10 18. The District's requirements for sources to submit timely permit applications are substantially
11 similar to EPA's part 70 regulations and require major sources to submit Title V permit applications
12 within 12 months after the source becomes subject to the permit program. See MDAQMD Rule
13 1203(B)(3).

14 C. GENERAL ALLEGATIONS

15 19. Respondent is a corporation incorporated in the State of California.

16 20. At all times relevant to this proceeding, Respondent was a "person" as that term is defined in
17 section 302(e) of the Act, 42 U.S.C. § 7602(e).

18 21. Pursuant to its authority under section 114 of the Act, EPA sent a letter dated August 13, 2007 to
19 Respondent requesting information regarding the Facility's compliance with the Act.

20 22. On or about September 17, 2007, Respondent submitted its response to EPA's section 114
21 information request ("Response to EPA's Information Request").

22 23. Respondent's Response to EPA's Information Request stated that the Facility's emissions of
23 styrene for calendar years 2002 – 2006 were as follows:

- 24 a) 2002 45,986 pounds
25 b) 2003 55,193 pounds
26
27
28

1 c) 2004 55,970 pounds

2 d) 2005 32,444 pounds

3 e) 2006 53,495 pounds

4 24. Respondent's Response to EPA's Information Request included a Notification of Compliance
5 Status, dated May 17, 2006, submitted by the company regarding the Facility's compliance status with
6 respect to Subpart WWWW.

7
8 25. Respondent's Response to EPA's Information Request included an admission that it had not
9 submitted semi-annual compliance reports to EPA or to the District.

10 D. ALLEGED VIOLATIONS

11 COUNT 1: FAILURE TO TIMELY SUBMIT SEMI-ANNUAL COMPLIANCE REPORTS

12 26. Paragraphs 1 through 25 are re-alleged and incorporated herein by reference.

13 27. Since at least 2002, emissions of styrene from the Facility have exceeded 10 tpy. Therefore, it is
14 a major source of HAP emissions and is subject to the MACT standard for Reinforced Plastic Composites
15 Production. 40 C.F.R. Part 63 Subpart WWWW §§ 63.5780-63.5935.

16
17 28. The deadline for the Facility to comply with Subpart WWWW was April 21, 2006 and therefore,
18 the Facility was required to submit semi-annual compliance reports to EPA, pursuant to 40 C.F.R. § 5910,
19 by January 31, 2007, July 31, 2007, and January 31, 2008.

20 29. Respondent violated section 112 of the Act and 40 C.F.R. § 63.5910 each time Continental
21 Fiberglass failed to submit semi-annual compliance reports.

22 COUNT 2: FAILURE TO TIMELY SUBMIT A TITLE V PERMIT APPLICATION

23 30. Paragraphs 1 through 25 are re-alleged and incorporated herein by reference.

24 31. The Facility is a major source of air pollution, as that term is defined at 40 C.F.R. § 70.2, because
25 it emits more than 10 tpy of styrene; a HAP listed under section 112(b).

26
27 32. The Facility's annual emissions of styrene have exceeded the Title V major source threshold
28 since at least 2002.

1 33. The Facility was required to submit a Title V permit application no later than 12 months after
2 becoming subject to the program.

3 34. The Facility should have submitted a Title V permit application no later than December 31, 2003.

4 35. The Facility did not submit a Title V permit application to EPA or MDAQMD until May 27,
5 2008.

6 36. Respondent violated section 502 of the Act and 40 C.F.R. § 70.5(a) from December 31, 2003 up
7 to May 27, 2008.

8 V. PROPOSED CIVIL PENALTY

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10 Section 113(d) of the Act, 42 U.S.C. § 7413(d), authorizes a civil administrative penalty of up to
11 \$25,000 per day for each violation of the Act, provided that the total amount of penalty assessed does not
12 exceed \$200,000. Pursuant to the Civil Monetary Penalty Inflation Adjustment Rule at 40 C.F.R. Part 19,
13 which implements the Debt Collection Improvement Act of 1996, these maximum amounts have been
14 adjusted to \$32,500 per day, not to exceed a total penalty of \$270,000, for each violation that occurred on
15 or after March 15, 2004.

16
17 For purposes of determining the amount of the civil penalty to be assessed, section 113(e) of the
18 Act, 42 U.S.C. § 7413(e), requires the Administrator to consider the size of the business, the economic
19 impact of the penalty on the business, the violator's compliance history and good faith efforts to comply,
20 the duration of the violation as established by any credible evidence, payment by the violator of penalties
21 previously assessed for the same violation, the economic benefit of noncompliance, and the seriousness of
22 the violation. Accordingly, after consideration of these statutory assessment factors, EPA requests the
23 assessment of a civil administrative penalty of up to THIRTY THOUSAND SEVEN HUNDRED FIFTY-
24 TWO DOLLARS (\$30,752) against Respondent for the violations of the Act set forth above.

25 VI. NOTICE OF OPPORTUNITY TO REQUEST A HEARING

26
27 You have the right to request a formal hearing to contest any material fact set forth in this
28 Complaint or to contest the appropriateness of the proposed penalty. Any hearing requested will be
conducted in accordance with the Administrative Procedure Act, 5 U.S.C. § 551 *et seq.*, and the

3 the Consolidated Rules of Practice is enclosed with this Complaint.

4 **You must file a written Answer within thirty (30) days of receiving this Complaint to avoid**
5 **being found in default, which constitutes an admission of all facts alleged in the Complaint and a**
6 **waiver of the right to a hearing, and to avoid having a penalty assessed without further**
7 **proceedings.** If you choose to file an Answer, you are required by the Consolidated Rules of Practice to
8 clearly and directly admit, deny, or explain each of the factual allegations contained in this Complaint to
9 which you have any knowledge. If you have no knowledge of a particular fact and so state, the allegation
10 is considered denied. Failure to deny any of the allegations in this Complaint will constitute an admission
11 of the undenied allegation.

12
13 The Answer shall also state the circumstances and arguments, if any, which are alleged to
14 constitute the grounds of defense, and shall specifically request an administrative hearing, if desired. If
15 you deny any material fact or raise any affirmative defense, you will be considered to have requested a
16 hearing. The Answer must be filed with:

17
18 Regional Hearing Clerk (ORC-1)
19 U.S. Environmental Protection Agency, Region IX
20 75 Hawthorne Street
21 San Francisco, CA 94105

22 In addition, please send a copy of the Answer and all other documents that you file in this action
23 to:

24 Kara Christenson
25 Office of Regional Counsel (ORC-2)
26 U.S. Environmental Protection Agency, Region IX
27 75 Hawthorne Street
28 San Francisco, CA 94105

29 You are further informed that the Consolidated Rules of Practice prohibit any *ex parte* (unilateral)
30 discussion of the merits of any action with the Regional Administrator, Regional Judicial Officer,

1 Administrative Law Judge, or any person likely to advise these officials in the decision of the case, after
2 the Complaint is issued.

3 **VII. INFORMAL SETTLEMENT CONFERENCE**

4 EPA encourages all parties against whom a civil penalty is proposed to pursue the possibility of
5 settlement through informal conferences. Therefore, whether or not you request a hearing, you may
6 confer informally with EPA through Ms. Christenson, the EPA attorney assigned to this case, regarding
7 the facts of this case, the amount of the proposed penalty, and the possibility of settlement. **An informal
8 settlement conference does not, however, affect your obligation to file an Answer to this Complaint.**

9 **VIII. ALTERNATIVE DISPUTE RESOLUTION**

10 The parties also may engage in any process within the scope of the Alternative Dispute
11 Resolution Act, 5 U.S.C. § 581 *et seq.*, which may facilitate voluntary settlement efforts. Dispute
12 resolution using alternative means of dispute resolution does not divest the Presiding Officer of
13 jurisdiction nor does it automatically stay the proceeding.

14 **IX. QUICK RESOLUTION**

15 Instead of requesting an informal settlement conference or filing an Answer requesting a hearing,
16 you may choose to resolve the proceeding by paying the specific penalty proposed in the Complaint and
17 filing a copy of the check or other instrument of payment with the Regional Hearing Clerk within thirty
18 (30) days after receiving the Complaint. If you wish to resolve the proceeding in this manner instead of
19 filing an answer but need additional time to pay the penalty, you may file a written statement stating that
20 you agree to pay the proposed penalty in accordance with 40 C.F.R § 22.18(a)(1) with the Regional
21 Hearing Clerk within 30 days after receiving the Complaint. The written statement need not contain any
22 response to, or admission of, the allegations in the Complaint. Within sixty (60) days after receiving the
23 Complaint, the full amount of the proposed penalty must be paid. Failure to make such payment within
24 this sixty-day period may subject you to default. Upon receipt of payment in full, the Regional Judicial
25 Officer will issue a Final Order. Payment by a respondent shall constitute a waiver of the respondent's
26 rights to contest the allegations and to appeal the Final Order. In addition, full payment of the proposed
27 penalty shall only resolve Respondent's liability for Federal civil penalties for violations and facts alleged
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2 or other equitable relief or criminal sanctions for any violations of law.

3 X. CONSENT AGREEMENT AND FINAL ORDER

4 EPA has the authority, where appropriate, to modify the amount of the proposed penalty to reflect
5 any settlement reached with you in an informal conference or through alternative dispute resolution. The
6 terms of such an agreement would be embodied in a Consent Agreement and Final Order. A Consent
7 Agreement signed by both parties would be binding as to all terms and conditions specified therein when
8 the Regional Judicial Officer signs the Final Order.

9 Dated at San Francisco, California on this 29th day of September, 2008.

11 
12 _____
13 DEBORAH JORDAN
14 Director, Air Division
15 U.S. Environmental Protection Agency, Region IX

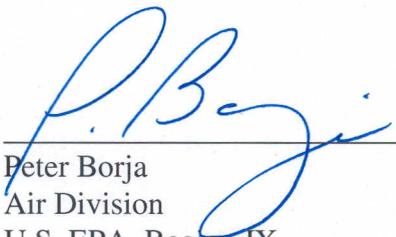
CERTIFICATE OF SERVICE

I hereby certify that on 9/30/08 the original copy of the foregoing COMPLAINT AND NOTICE OF OPPORTUNITY FOR HEARING was filed with the Regional Hearing Clerk, Region IX and that a copy was sent via U.S. Mail to:

William H. Lohman
President
Continental Fiberglass, Inc.
17031 Muskrat Avenue
Adelanto, CA 92307

John Rantz
Benton & Associates
4630 50th Street, Suite 614
Lubbock, TX 79414

Date: 9/30/08


Peter Borja
Air Division
U.S. EPA, Region IX